

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-724-2021 (O&M)
Reserved on: 05.08.2022
Date of decision: 10.08.2022

KISHORI LAL

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Anmol Rattan Sidhu, Senior Advocate assisted by
Mr. Sukhcharan Singh Gill, Advocate
for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab

Mr. R.S. Sangha, Advocate
for the complainant.

SURESHWAR THAKUR, J.

1. The accused faced charges for offences constituted under Sections 279, 304-A, 427 of IPC. The above offences became embodied in FIR No.15 of 02.02.2014, registered at Police Station Fatehgarh Sahib, District Fatehgarh Sahib.

2. The learned Judicial Magistrate through a verdict drawn, on 06.07.2017, on P. Ch. No.22/11.03.2014, convicted the accused qua charges punishable under Sections 279, 304-A of IPC. Moreover, through a separate sentencing order drawn by the learned Judicial Magistrate concerned, he proceeded to impose the hereinafter extracted sentence(s) of imprisonment, upon, the convict.

“Under Section

279 IPC

304A

Rigorous Imprisonment

6 months

2 years”

3. The aggrieved-convict preferred an appeal thereagainst before the learned Additional Sessions Judge, Fatehgarh Sahib, and, the latter upon Criminal Appeal No.135 of 2017, made a decision on 08.07.2021, where through he, after dismissing the appeal (supra), affirmed the above verdict of conviction, and, also the consequent therewith sentence(s) (supra), as become recorded initially by the learned trial Magistrate concerned.

4. The convict becomes aggrieved from the concurrently recorded verdicts of conviction, and, consequent therewith sentence(s), as became imposed upon him, by both the learned trial Courts below, and, has strived for their annulments through his constituting the instant petition.

5. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex.PW-7/B, is assigned, therein it has been echoed that on 2.02.2014 ASI Malkit Singh along with police officials was present at Civil Hospital, Fatehgarh Sahib where Manjit Kumar got his statement recorded to the effect that he is a scrap dealer. Yesterday night he along with his family was going to his home after taking dinner in the house of his cousin Harinder Kumar. He and his cousin Rakesh Kumar were present in the car and his younger brother Harinder Kumar was going on his Bajaj Chetak scooter No.PB-52-0553. At 9.30 P.M when they reached near Chungi No.4 one driver of chassis of truck came in rash and negligent manner and hit the same in scooter of his brother. His brother fell down. He and his cousin stopped driver of chassis of truck and noted number as HP-14-CT-6491. Thereafter the driver fled away and they got his brother admitted in Civil Hospital, Fatehgarh Sahib. Due to head injury his brother expired. The accident occurred due to rash and negligent driving of driver of chassis. After recording statement of complainant, C-Iqbal Singh was sent to police station to lodge FIR. Postmortem on dead body was got

conducted. Site was inspected and site plan was prepared. Scooter bearing No.PB-52-0553 was taken into possession. On 8.02.2014 accused was produced by Chunni Lal who was arrested. After completion of investigation and necessary formalities attached thereto, challan was prepared and presented in the Court.

6. PW-1 who conducted post mortem upon the deceased Harwinder Kumar, has on his stepping into the witness box, proven post mortem report, to which Ex. PW-1/A is assigned, and, has also proven the pictorial diagram to which Ex.PW-1/B is assigned. During the course of her examination-in-chief, she has narrated, that on hers conducting autopsy on the body of the deceased, hers noticing the existence(s) thereon of the hereinafter mentioned injuries.

- 1. Crushed head with brain matter coming out through the fracture side, clotted blood present at the injured side.*
- 2. Lacerated wound 4 cm present over left side of neck with soft tissue coming out.*
- 3. Abrasion present over left elbow.*
- 4. Abrasion present over left lateral ankle joint.*
- 5. Mouth deviated towards right side suggestive of fracture mandible, clotted blood present at fracture side.*

7. She has in her examination-in-chief also opined, that the cause of death was on account of coma, and, shock due to antemortem injuries, and, that the said antemortem injuries were sufficient in ordinary course of nature to cause the demise of the person examined. Moreover, she also echoed therein, that the probable time *inter-se* the injuries, and, death was immediate, and, that the time between death and post mortem examination was 12 to 4 hours. Therefore, the above deposition of PW-1 relates the antemortem injuries, and, also the cause of death *prima-facie*, to the penal incident which occurred, at the crime site, as embodied in site plan, to which Ex.PW-7/E is assigned. However,

during the course of her cross-examination she was unable to convincingly state that, the antemortem injuries were a result of a road side accident.

8. Be that as it may, the above statement in the cross-examination of PW-1, may completely negate the testifications, as made by the ocular witnesses, to the occurrence, as the settled rule, upon, there being any *inter-se* contradictions *inter-se* medical evidence, and, credible ocular account, is that, qua primacy being assigned to ocular account *qua* the occurrence, than to, the medical account, unless of course the ocular account qua the occurrence, is evidently ridden with vices of gross *intra-se* contradictions or stark *inter-se* contradictions, and/or, the testifications of the eye witnesses, are evidently stained, with the blemish of gross improvements or embellishments, being made by the witnesses concerned, over his/their respectively recorded previous statement(s) in writing(s).

9. Therefore, it becomes incumbent, upon this Court to allude to the deposition of the ocular witnesses to the occurrence. The accident in which the deceased succumbed to the antemortem injuries, as reflected in the PMR, was a sequel of a collision *inter-se* the scooter bearing No. PB-52-0553, whereons, the deceased was astride, at the relevant time, with a truck bearing chassis truck No. HP-14-CT-6491, which was allegedly driven, at the relevant time, by the accused-revisionist. The learned counsel for the petitioner has submitted that, the prosecution has been unable to cogently prove that, at the relevant time, the accused was on the steering wheel of truck chassis (*supra*).

10. Therefore, it is deemed important to allude to the deposition made by PW-2 Manjit Kumar, and, by PW-4 Rakesh Kumar, both of whom are the purported ocular witnesses to the occurrence. Though, in their respective depositions, as comprised in their respective examination(s)-in-chief, both echo

that, at the crime site, they had taken down the number of the offending vehicle, but both the PWs, in their respective examination(s)-in-chief, omit to reveal, that the accused, was on the steering wheel of the above offending vehicle. However, without their initially describing in their respectively made previous statement(s) in writing, the key characteristics physical attributes, of the accused, but yet they proceeded to identify the accused in the police station concerned, to be rather the driver of the offending vehicle. Subsequently, also they proceeded to identify the accused in Court, rather to be on the steering wheel of the offending vehicle.

11. Nonetheless, the identification of the accused, in Court, by the ocular witnesses to the occurrence, would hold vigor, only when prior thereto in a valid test identification parade, as became conducted, during the course of investigation(s), hence by the investigating officer concerned, the above had there, identified, rather the accused to be the person who was, on the steering wheel of the offending vehicle, but at the relevant time. Moreover, the test identification parade, would hold an aura of evidentiary solemnity, only when prior thereto, in their respectively made previous statements in writing, rather the purported ocular witnesses, to the occurrence, had narrated therein, the key characteristics features of the accused. However, in their respectively made previous statements, both the purported eye-witnesses to the occurrence, did not unfold, the above trite factum. Resultantly, the identification by both, of the accused in the police station, was legally frail, and, also the identification by both, of the accused in Court, was equally legally infirm.

12. The prosecution though strives to overcome, the above lacunae existing in the prosecution case, and, appertaining to an invalid identification, being made of the accused during the course of investigations, rather by the

purported eye-witnesses to the occurrence, through its alluding to PW-6, in his examination-in-chief, making a statement that, on 08.02.2014, Chunni Lal son of Roshan Lal, had produced the accused before the investigation officer concerned, and, which resulted in his becoming arrested under arrest memo Ex.PW-6/A. Moreover, PW-6 has also deposed, that Chunni Lal produced the offending chassis truck, along with temporary registration certificate, and, also with original bill, before the investigating officer concerned, and, the same were taken into possession vide memo Ex.PW-6/C. Though, Chunni Lal appears to be the owner of the offending chassis truck, and, in that capacity he took to produce, the same before the investigating officer concerned. However, the production of the accused, by him, before the investigating officer concerned, and, also the production, at his instance of the offending chassis truck, would garner immense solemnity, only when he was cited, as a witness, and, had also stepped into the witness box, and, had also proven the above factum, otherwise not. However, neither Chunni Lal became cited, as, a prosecution witness nor obviously he stepped into the witness box to prove the above made deposition, by PW-6, and, but as a natural corollary, rather suspicion become aroused with respect to the above articulations, as, made in the examination-in-chief of PW-6. In sequel it has to be concluded that, than the production of the offending chassis truck, and/or, of the accused, by Chunni Lal before the investigation officer concerned, rather not becoming caused by one Chunni Lal, but both above happening hence in a mode alternate thereto. Therefore, it has to be concluded that, the dependence, as made by the prosecution, upon Chunni Lal to make this Court conclude that, he had engaged the present accused, as a driver, and, more importantly, that at the relevant time, he was on the steering wheel of the offending chassis truck, does not garner, any evidentiary worth.

13. The effect of the above may have been also subsumed, through the investigating officer concerned, seizing the log book of the chassis truck, from the truck, and, his thereafter proving that, all the entries, as made therein were in the handwriting of the accused, but the above has not happened, and, in sequel the above made conclusion, about the prosecution completely failing to establish either the identity of the accused to be, on the steering wheel of the offending chassis truck, at the relevant time, and, nor its proving that, the accused committed the charged offences, rather becomes completely fortified.

14. Be that as it may, the purported ocular witnesses to the occurrence could well have from their cell phone(s) concerned, captured the photo of the accused for ensuring that, the printouts thereof, become handed over to the investigating officer concerned. However, the above has not happened, whereas, it constituted best evidence, to nullify the ill-effects, if any, of a legally frail test identification parade, being conducted by the investigating officer, during the course of his holding investigations into the appeal FIR, besides would have overcome the ill-effect, if any, of the thereafter the purported ocular witnesses, to the occurrence, identifying the accused in Court, to be at the relevant time, rather on the steering wheel of the offending chassis truck. For the above stated reason, this Court finds that, both the learned Courts below have not properly appraised the effect of the above relevant evidence, and, resultantly the concurrently made verdicts of conviction, and, consequent therewith sentence(s) imposed, upon the accused, by both the learned Courts below, hence merit interference.

15. In consequence, the revision petition is allowed. The impugned verdicts, as, drawn by the both learned Court below, upon the convict, are quashed, and, set aside. The personal, and, surety bonds of the convict-

revisionist are directed to be forthwith cancelled, and, discharged. The convict-revisionist if in custody, and, if not required in any other case, is directed to be forthwith released from prison. Fine amount, if any, deposited by the accused-revisionist be forthwith refunded to him, but in accordance with law. Release warrants be accordingly prepared. Records of the Courts below, be sent down forthwith. Case property, if not required, be destroyed after the expiry of period of limitation.

16. Pending miscellaneous application(s), if any, stand(s), disposed of.

10.08.2022

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(SURESHWAR THAKUR)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No